

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 1227—PATENTS, DATA, AND COPYRIGHTS

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AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

#### Subpart 1227.3—Patent Rights Under Government Contracts

##### 1227.304 Procedures.

##### 1227.304-5 Appeals.

(b) Agency actions listed at (FAR) 48 CFR 27.304-5(a)(1) and (a)(3) through (a)(5) may be appealed to the Head of the Contracting Activity (HCA). Actions under this section shall be coordinated with the legal counsel of the responsible office.

(1) Actions must be appealed within 30 days of receipt of the written statement required by (FAR) 48 CFR 27.304-5(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA shall issue a determination within 45 days from the date the contractor's appeal is received.

(c) Appeals of decisions rendered under (FAR) 48 CFR 27.304-5(a)(2) are subject to the following requirements:

(1) Actions must be appealed within 30 days of receipt of the written statement required by (FAR) 48 CFR 27.304-5(a). The contractor must present all pertinent arguments in the appeal along with documentary evidence, if any.

(2) The HCA may hold an informal hearing if deemed appropriate or at the request of the contractor. The informal hearing shall be held after all fact-finding is completed.

(i) If a hearing is held, there shall be a transcribed record of the same. A copy of the transcript shall be available to the contractor at cost.

(ii) Transcription of the hearing may be waived by mutual agreement of the parties.

(3) The HCA shall designate an impartial fact-finding official. The official conducting the fact-finding shall prepare findings of fact and transmit them to the HCA promptly after the conclusion of the fact-finding proceeding along with a recommended determination.

(i) A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the HCA; and, upon request by the contractor oral arguments will be held before the HCA as part of an informal hearing. The HCA will make the final determination as to whether the initial agency action was appropriate under the relevant laws and procedures (See 1227.304-5(c)(4)).

(ii) Any portion of the informal hearing that involves testimony or evidence shall be closed to the public. Agencies shall not disclose any such information obtained in the course of the appeal to persons outside the government except when such release is authorized by the contractor (assignee or licensee).

(4) The HCA's final determination shall be based on the findings of facts, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The HCA may reject only those facts that have been found clearly erroneous and must explicitly state the rejection and the basis for the contrary finding. The HCA shall provide the contractor (assignee or exclusive licensee) a written determination by certified or registered mail no later than 90 days after fact-finding is completed or no later

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than 90 days after oral arguments, whichever is later.

### **1227.305 Administration of patent rights clauses.**

### **1227.305-4 Conveyance of invention rights acquired by the Government.**

Solicitations and contracts that include a patent rights clause must provide the contractor the means to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontracts.

## **PART 1228—BONDS AND INSURANCE**

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1228.311-1 Contract clause.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

SOURCE: 70 FR 6507, Feb. 7, 2005, unless otherwise noted.

### **Subpart 1228.1—Bonds and Other Financial Protections**

#### **1228.106 Administration.**

#### **1228.106-1 Bonds and bond-related forms.**

(b) Standard Form (SF) 25, Performance Bond, prescribed at (FAR) 48 CFR 28.106-1(b), shall provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the con-

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tractor. Forms other than the SF 25 (e.g., a commercial form) shall not be used by contractors when a performance bond is required.

#### **1228.106-6 Furnishing of information.**

(b) When furnishing surety information, the inquirer should also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act (40 U.S.C. 3131-3134) are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding \$2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. To insure proper payment to such employees, this investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3141), and Copeland (Anti-Kick-back) Act (41 U.S.C. 51-58).

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106-6(b), the requirement for a copy of the contract may be satisfied by furnishing a machine-duplicate copy of the contractor's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by his/her signature, title and name of the OA. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT